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Absent or Invisible? : Women Intellectuals and Professionals at the Dawn of a Discipline

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Cambridge University Press
2020-09

Tallgren , I 2020 , Absent or Invisible? Women Intellectuals and Professionals at the Dawn of a Discipline . in F Mégret & I Tallgren (eds) , The Dawn of a Discipline : International Criminal Justice and Its Early Exponents . Cambridge University Press , pp. 381-413 .

<http://hdl.handle.net/10138/327244>

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Absent or Invisible?

‘Women’ Intellectuals and Professionals at the Dawn of a Discipline

IMMI TALLGREN



Figure 15.1 Katherine Fite Lincoln and Justice Robert H. Jackson Seated at a Desk, ca. 1945. Credit: Harry S. Truman Library & Museum.



Figure 15.2 Rebecca West (1892–1983). Credit: Hulton Archive/Stringer/Getty Images.

15.1 Awakening

*The question [...] is how can we enter the professions and yet remain civilized human beings; human beings, that is, who wish to prevent war?*¹

The inspiration for this chapter came from my belated awakening as co-editor of the book.² The project was already well-formed when it really struck me that the table of contents contained zero chapters on *women* intellectuals or professionals. All our distinguished, multidisciplinary team of authors, men and women, had chosen to write about men. I was perplexed. How did this happen? Was it because there really were no women to ‘enter the history’ worth writing about in our chosen period of time (1900–1950), or was it that none were discovered? Was it our (the editors’) bias, not having reached the right scholarly forums? We had contacted scholars specialising in international criminal law across the globe, either lawyers or historians. Early on, we had briefly addressed the problem and then shrugged it off as unfortunate but unresolvable. We had of course seen occasional references to women involved in the International Military Tribunal (IMT) and other post-World War II trials, where the rare women mentioned were represented as the *first and only*. The impression was that their main accomplishment was the fact of having been there, the only ‘one wearing a skirt’.³ But were there key women intellectuals and professionals we could have suggested to aspirant participants to the project? No names popped up.

Not being able to name a single intellectual or professional in our period of focus that could be treated on an equal level with the other (male) characters – and I will get back to what equal level is supposed to mean – became my first research finding. Suddenly its significance detonated. Since the late 1990s, international criminal law is lauded as one of the key successes of feminist approaches to international law.⁴ But

¹ Virginia Woolf, *Three Guineas* (New York: Harcourt, 1938), p. 75.

² I would like to thank warmly Hilary Charlesworth, Karen Knop, Martti Koskeniemi, Frédéric Mégret, Tanya Monforte, Sofia Stolk, Sergey Vasiliev, all other readers, and the participants of the Helsinki workshop in December 2017 for their comments and inspiration. I am grateful to the Finnish Cultural Foundation and the Kone Foundation for supporting my research.

³ John Q. Barrett, ‘Katherine B. Fite: The Leading Female Lawyer at London & Nuremberg, 1945’, in Elizabeth Andersen and David M. Crane (eds.), *Proceedings of the Third International Humanitarian Law Dialogs* (Washington, D.C.: The American Society of International Law, 2010), p. 18. See also, Susanne Schattenberg, ‘Ein Diplomat im Kleid: Aleksandra Kollontaj und die sowjetische Diplomatie’, in Corina Bastian et al. (eds.), *Das Geschlecht der Diplomatie: Geschlechterrollen in den Aussenbeziehungen vom Spätmittelalter bis zum 20. Jahrhundert* (Cologne, Weimar, Vienna: Böhlau Verlag, 2014).

⁴ See, for example, Janet Halley, et al., *Governance Feminism: An Introduction* (Minneapolis: University of Minnesota Press, 2018).

strikingly, as I discovered, even the most recent histories of this discipline of law and its institutional practice, be they written by international lawyers, legal historians, or sociologists, are practically silent on women.⁵ With regard to the intellectual and professional history of international criminal law, the first impression one gets is that women enter as late as in the 1990s. I felt I was staring at a puzzling discontinuity: how is it that (most) international feminist activists had 'found' and considered so promising for their objectives a legal and intellectual project that hardly any women had a previous investment in?

However, as soon as I started to talk about my discovery, colleagues and new acquaintances from conferences or shoptalk came up with an anecdote and a new name or two. I noticed that if one zooms out of the established canon of the discipline's history, exceptions become visible. Names and traces of work appear, and at times images of those 'skirts'.⁶ To quote Diane Marie Amann, the pioneer scholar on this question: '[c]onventional accounts of post-World War II trials tend to relegate women at Nuremberg to the occasional cameo appearance. Yet women of many nationalities were present throughout, from the Allied lawyers' first inspection of the Nuremberg courthouse until the end of the last of twelve Nuremberg trials.'⁷ The French Doctor of Law

⁵ See, e.g., Mark Lewis, *The Birth of the New Justice: The Internationalization of Crime and Punishment, 1919–1950* (Oxford: Oxford University Press, 2014); Morten Bergsmo, Cheah Wui Ling and Yi Ping (eds.), *Historical Origins of International Criminal Law*, 4 vols. (Brussels: Torkel Opsahl Academic EPublishers, 2014–2015); Kevin Jon Heller and Gerry Simpson (eds.), *The Hidden Histories of War Crimes Trials* (Oxford: Oxford University Press, 2013); Yuki Tanaka, Tim McCormack and Gerry Simpson (eds.), *Beyond Victor's Justice? The Tokyo War Crimes Trials Revisited* (Leiden: Martinus Nijhoff Publishers, 2011).

⁶ See, e.g., Susanne Schattenberg, 'Ein Diplomat im Kleid: Aleksandra Kollontaj und die sowjetische Diplomatie', in Corina Bastian et al (eds.), *Das Geschlecht der Diplomatie: Geschlechterrollen in den Aussenbeziehungen vom Spätmittelalter bis zum 20. Jahrhundert* (Cologne, Weimar, Vienna: Böhlau Verlag, 2014).

⁷ Diane Marie Amann, 'Cecelia Goetz, Woman at Nuremberg' (2011) 11 *International Criminal Law Review* 607–20 at 608. See also Diane Marie Amann, 'Politics and Prosecutions: From Katherine Fite to Fatou Bensouda', in Elizabeth Andersen and David M. Crane (eds.), *Proceedings of the Fifth International Humanitarian Law Dialogs* (Washington, D.C.: American Society of International Law, 2012), p. 14. Cecelia Goetz, 'Impressions of Telford Taylor at Nuremberg' (1999) 37 *Columbia Journal of Transnational Law* 669–72; Amann, 'Cecelia Goetz, Woman at Nuremberg'; Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law* (Oxford: Oxford University Press, 2011), p. 34. Other names, such as Sadie Arbuthnot, Mary Kaufman, Belle Mayer, Dorothea Minskoff, and Esther Johnson appear in, e.g., Diane Marie Amann, 'Portraits of Women at Nuremberg', in Elizabeth Andersen and David M. Crane (eds.), *Proceedings of the Third International Humanitarian Law*

Aline Chalufour worked both at the IMT and the first Ravensbrück trial in Hamburg.⁸ A few women acted as defence attorneys, such as Elisabeth Gombel who was a lead defence counsel.⁹ Women were also present both at the IMT and the successor Nuremberg trials as interpreters and in various clerical roles. At the IMT for the Far East in Tokyo, attorney Grace Kanode Llewellyn worked as an assistant prosecutor and other mainly US women lawyers and staffers had various tasks.¹⁰ There were no women judges in those trials, but women judges did feature in some of the national post-World War II trials for crimes one would today label 'international' – even if at the time they applied national law. Judge Marguerite Haller, for example, took part in 215 cases in the Rastatt trials (1946–1954) held in the French occupied zone of Germany.¹¹ There were also women defence attorneys in Rastatt, such as German national Helga Kloninger. Hertta Kuusinen was the only woman among the fifteen judges in the Finnish trial for the responsibility for war in 1945–1946.¹²

And so on. No doubt, tens or hundreds or more names of prosecutorial staff members, defence lawyers, judges or clerks, legal secretaries, and the like could be singled out and added to the list, depending on where one draws the line for the relevant contexts. As soon as one admits that there were no clear borders between national, transnational, European, and international law, as there arguably are nowadays, academics and professionals active in their respective national law, as well as in transnational law, enter the picture.¹³ Contiguous fields of law and

Dialogs, pp. 31–54. Amann and other scholars have also brought into view women in different roles on the IntLawGrrls blog (www.intlawgrrls.com).

⁸ Telford Taylor, *The Anatomy of the Nuremberg Trials: A Personal Memoir* (Boston: Little, Brown, 1992) refers to her as a senior member of staff, 'an administrator who spoke excellent English and served as interpreter on important occasions', p. 213.

⁹ See, e.g., Kim Christian Priemel, *The Betrayal: The Nuremberg Trials and German Divergence* (Oxford: Oxford University Press, 2016), p. 161.

¹⁰ See Shana Tabak, 'Grace Kanode Llewellyn: Local Portia at the Tokyo War Crimes Tribunal' (2013) *International and Comparative Law Perspectives* 7–9; Diane Marie Amann, 'Glimpses of Women at the Tokyo Tribunal', *University of Georgia School of Law Legal Studies Research Paper* 2019–02 <https://ssrn.com/abstract=3309257>.

¹¹ See, e.g., 'Marguerite Haller, La Femme dans la magistrature', *Cour d'appel de Douai, Audience solennelle de rentrée du 16 septembre 1961* (Douai: G. Lannier, 1961), p. 11.

¹² On the trial, see Immi Tallgren, 'Martyrs and Scapegoats of the Nation? The Finnish War-Responsibility Trial, 1945–1946', in Morten Bergsmo, Cheah Wui Ling, and Yi Ping (eds.), *The Historical Origins of International Criminal Law*, vol. II (Brussels: Torkel Opsahl Academic EPublisher, 2014), pp. 493–538.

¹³ For examples, see Sara Kimble and Marion Röwekamp (eds.), *New Perspectives on European Women's Legal History* (New York: Routledge, 2016); Rebecca Mae Salokar

social sciences adjacent to law, such as the thematic area currently known as criminology, were amongst those exhibiting early traces of women's work in international forums. By contrast, key academic associations of interest to this research project, such as the International Union of Penal Law and its successor the International Association of Penal Law (AIDP), remained male bastions, at least with regard to leading roles.¹⁴ Likewise, the United Nations War Crimes Commission (1943–8) lacked women in visible roles.

Further, one could focus on women who were in politics (civil-society activists, parliamentarians, and other comparable roles), who had an institutional role (in national or international administration, courts or tribunals, or anything comparable), who wrote and published (academics, authors, journalists). Pacifism was a cause carried by many women activists, including Bertha von Suttner who was awarded the Nobel Peace Prize in 1906.¹⁵ The Women's International League for Peace and Freedom and other associations played a role from early on, and notably organised the Hague Peace Conference in 1915.¹⁶ Various international campaigns, such as the one against white slavery were driven by activists like Lady Rothschild, Mary Hyett Bunting (Lady Bunting), Bertha Pappenheim, and others from the League of Jewish Women (Jüdischer Frauenbund).¹⁷ Following the legendary early activists of humanitarianism such as Florence Nightingale and Clara Barton,

and Mary L. Volcansek (eds.), *Women in Law: A Bio-Bibliographical Source Book* (Westport: Greenwood Publishing Group, 1996), Mary Jane Mossmann, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Oxford and Portland: Hart, 2006).

¹⁴ In the special session of the AIDP held at the Nuremberg courthouse in 1946, the names of Aline Chalufour and Delphine Debenest appear on the participants list, see Henri Donnedieu de Vabres, 'Procès-verbal de la réunion de l'AIP siège du tribunal international (Nuremberg)' (2015) 86 *Revue Internationale de Droit Penal* 915. No women have ever been appointed president of the AIDP. The first woman secretary-general was Katalin Ligety (2008–14).

¹⁵ Irwin Abrams, 'Betha von Suttner and the Nobel Peace Prize' (1962) 22 *Journal of Central European Affairs* 286–307.

¹⁶ See, e.g., Laura Beers, 'Advocating for a Feminist Internationalism Between the Wars', in Glenda Sluga and Carolyn James (eds.), *Women, Diplomacy and International Politics Since 1500* (London: Routledge, 2016) 202; Freya Baetens, 'The Forgotten Peace Conference: The 1915 Congress of Women', in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2010); Leila Rupp, 'Constructing Internationalism: The Case of Transnational Women's Organizations, 1888–1945' (1994) 99 *American Historical Review* 1571–1660.

¹⁷ See Paul Knepper, *The Invention of International Crimes: A Global Issue in the Making, 1881–1914* (New York: Palgrave Macmillan, 2010), p. 192.

Renée-Marguerite Cramer (later Frick-Cramer) was the first woman to enter the International Committee of the Red Cross (ICRC), which she did in 1918, slowly to be followed by others.¹⁸ Several well-known journalistic commentators at international criminal trials were women, including Rebecca West, Erika Mann, Martha Gellhorn, and Victoria Ocampo.¹⁹ Finally, Hannah Arendt and Judith Shklar feature as the only ‘historical’ women whom scholars of international criminal law today typically refer to.²⁰

For a moment, it seemed as if the famine turned into a feast of women, from fields close or far, if not lawyers then almost, in similar tasks, also from early on in international law.²¹ Somewhat daunted, I wondered what to do with those names and fragments of information, searching for an approach if not a ‘method’. Most importantly, how to represent adequately my contradictory discoveries, the fragments of presence and the total absence in our research project figuring big names, Hans Kelsen, Vespasian Pella, Henri Donnedieu de Vabres, and company? My discovery of the absence of women was not unique, to put it mildly. Women are absent from the disciplinary, intellectual, and professional histories of almost any field of activity beyond household work or midwifery.²² Even if women have recently become more visible in scholarship of international law, and a few occupy prominent positions in international legal institutions, research on women’s roles in the past of international law

¹⁸ As Daniel Palmieri, ‘Guerre, humanité et féminité: le Comité international de la Croix-Rouge et les femmes (1863–1965)’, in Jean-Marc Delaunay and Yves Denéchère (eds.), *Femmes et relations internationales au XXe siècle* (Paris: Presses Sorbonne Nouvelle, 2006), p. 192 writes, ‘between 1919 and end of 1965, they were only six to enter, whereas 56 new members were men’. See also Silvia Cadei, ‘Le comité de CICR: une affaire d’hommes?’ 2 *Histoire & Genre Automen* (2017) 74–83 and John Hutchinson, *Champions of Charity: War and The Rise of The Red Cross* (Boulder: Westview Press, 1996) for critical observations on gender and the ICRC.

¹⁹ See, e.g., Carl Rollyson, ‘Reporting Nuremberg’, in *Rebecca West and the God That Failed* (Lincoln: iUniverse, 2005), pp. 79–85.

²⁰ However, in addition to not being lawyers, they wrote their work relevant in this context after the timeframe of our research project. See, e.g., David Luban, ‘Hannah Arendt as a Theorist in International Criminal Law’ (2011) 11 *International Criminal Law Review* 621–41.

²¹ To mention a prominent example, see Christine de Pizan pictured as ‘mother of international law’, www.ejiltalk.org/founding-fathers-of-international-law-recognizing-christine-de-pizan/.

²² For a landmark study, see Laurel Thatcher Ulrich, *A Midwife’s Tale: The Life of Martha Ballard, Based on her Diary 1785–1812* (New York: Alfred Knopf, 1990). On the changes towards new ventures and resources in the history of women, see Laurel Thatcher Ulrich, *Well-Behaved Women Seldom Make History* (New York: Vintage Books, 2007).

and its broader intellectual history remains rare. At the same time, asking the notorious 'women question' with regard to histories of international criminal law may seem too *passé* – and reductive. How could research 'on women' be conducted today – decades after the post-structuralist questioning of identity, agency, power, and knowledge – without adhering to a positivist stream of scholarship that considers the category women unproblematic, monolithic, and foundational?²³ The difficulty starts in circumscribing the meanings given to 'being a woman/man' in this field of international law, today and in 'the past'. Even a superficial reading of gender and women studies, or women's, feminist, and gender histories, suffices to convince the reader of the complexity. As critics have argued since the 1970s, efforts to shed light on women – and sex and gender – easily fall back to binary patterns, compensatory or separatist spheres, potentially re-strengthening the sexual difference or the misunderstanding that only women 'have gender' or 'suffer from gender', and may also come close to semi-universal essentialism, ignoring the intersectionality of class, sexuality, race, culture, nationality, religion, and the contexts in time and space.²⁴

When I confronted the absence in 2016, its banality did not make it less puzzling. Nor could I find a reason to continue acting as if the absence were without material consequences for international criminal law and its institutional practice today. That we had a table of contents containing zero chapters on women intellectuals or professionals was potentially a consequence of too tight academic specialisation, if not segregation, leading to a fragmented understanding I set out to rectify. I soon noticed, however, that 'rectifying' the absence is far from simple, leading to broader interrogations than just the choice of an academic community or particular authors. How does the absence of women in histories of international criminal law connect, for example, to scholarship in feminist approaches to international law, on how 'the international legal system is gendered at a deep level and its mantle of rationality and

²³ Kathleen Canning historicises the changes in historiographical research on women and gender in 'Gender History: Meanings, Methods and Metanarratives', in *Gender History in Practice: Historical Perspectives on Bodies, Class and Citizenship* (Ithaca: Cornell University Press, 2006). See also Denise Riley, 'Am I That Name?' *Feminism and the Category of Woman in History* (Houndmills: Macmillan, 1988).

²⁴ See, e.g., bell hooks, 'Postmodern Blackness', in *Yearning: Race, Gender and Cultural Politics* (Boston: South End Press, 1990). See also, e.g., Renate Bridenthal, Claudia Koonz and Susan Stuart, *Becoming Visible: Women in European History* (2nd edn., Boston: Houghton Mifflin, 1987).

objectivity is a chimera',²⁵ to quote Hilary Charlesworth and Christine Chinkin? Beyond the complex epistemological and methodological choices in historiographical terms, the absence also opens perplexing questions on how various types of agency are valued inside the discipline. How exactly should one go about the task: should one look only for exceptionally important women or 'women worthies',²⁶ to borrow Gerda Lerner's term for women whose achievements did not differ significantly in kind from those of men in the same context? What if there appears to be none, even of the latter kind, but only women as secretaries and assistants, for example: should one turn to quantitative research, collecting, listing, categorising, and organising the numbers and types of any women encountered? Based on what taxonomy?

I chose to make these interrogations and obstacles the core of my chapter. Aspiring to ask 'large questions in small places',²⁷ I am sketching two microhistories²⁸ starring contrasting types of individuals: the first a professional of international law, the second an intellectual with no legal background. Tentatively, I claim a prominent place for them in the intellectual history on international criminal law – even if they have so far occupied a tiny slot in its backyard. My chapter, therefore, becomes an invitation to write more comprehensive histories in which women, and indeed other underrepresented groups, are present. My chapter is also a way of interrogating the problematic aspects of representing individuals as women, in particular, deviant from a normative understanding of an 'international criminal lawyer'. I start by discussing various ways by which an absence in histories – as in this research project – can be countered, reflecting on the choices that matter in representing presence – and absence. I analyse how my two examples of individuals have been so far represented, pointing to frequent tropes in narrating the *first and only*. I discuss, first, the effect of the particular types of sources typically available for the one searching for women. I question, second, the predominant emphasis on exceptionality where the sex and gender seem to override any other characteristics of the individual in question and, third, how gendered the attention to sociological

²⁵ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), p. 95.

²⁶ Gerda Lerner, *The Majority Finds Its Past: Placing Women in History* (Oxford: Oxford University Press, 1979), pp. 145–6.

²⁷ C. W. Joyner, *Shared Traditions: Southern History and Folk Culture* (Urbana, University of Illinois Press, 1999), p. 1.

²⁸ Carlo Ginzburg, 'Microhistory, Two or Three Things That I Know about It' (1993) 20 (1) *Critical Inquiry* 28.

profiles and private life is. Fourth, I address the difficulties in concretely defining professional hierarchies or the exact outputs of the marginal(ised) subjects. Through the microhistories, I question the role their characters could be claimed to have, compared to other figures in this volume, and thus examine more broadly what it means to be in the margins of what is in many ways a dominating project. I also ponder on what attitudes the characters sketched in the microhistories may have held towards current feminist causes and typical expectations with regard to women's participation. I end with thoughts on why one asks the question on sex and gender of those who figure in our intellectual histories – on the moves or desires that figure behind the search.

15.2 On Ways of Countering an Absence

Not only in international criminal justice, but in international law more broadly the first impression is that few women were professionally active in the period 1900–1950. Only a few names of the first and only, again, are likely to be vaguely known, if at all. The first woman elected to the Institut de droit international, established in 1873, was Suzanne Bastid, as late as in 1956. She then came to be the first female member of the International Court of Justice (ICJ), designated as an ad hoc judge by Tunisia in 1982.²⁹ Others, such as Sarah Wambaugh (1882–1955), were active in particular fields of international law in said period even if they were not lawyers by education.³⁰ Their names, however, do not make part of what we today typically understand and teach our students as the past of international law that counts. Martti Koskenniemi's *The Gentle Civilizer of Nations*, for example, covering the period 1870–1960, refers only to (white) men, 'fathers and grandfathers in the profession' of international lawyers.³¹ Similarly, David Armitage's *Foundations of Modern International*

²⁹ See Jacqueline Lucienne Lafon, 'Suzanne Bastid-Basdevant', in Salokar and Volcansek, *Women*. Rosalyn Higgins became a permanent judge at the ICJ in 1995.

³⁰ Sarah Wambaugh was 'an instructor in history and government, and an expert in international affairs', specialising in plebiscites, see *Sarah Wambaugh, 1882–1965. Collection of Documents Related to Plebiscites*, <https://hollisarchives.lib.harvard.edu/repositories/5/resources/4543>.

³¹ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001), p. 5. Koskenniemi does not 'exclude the possibility – indeed, the likelihood – that in the margins [...] there have been women and non-Europeans whose stories would desperately require telling so as to provide a more complete image of the profession's political heritage', p. 9.

Thought deals only with ‘the landmarks of a heavily subscribed Anglo-centric canon of political thinkers, completely male’.³²

If ‘international law is what international lawyers do and think’ and its histories are narratives about ‘how the profession ended up being what it is today’,³³ intellectual and professional histories become a powerful example of how the past is operating in present times. The hefty absence of women in histories of international criminal law and its institutional practice this chapter evokes could be addressed from various methodological premises, with different approaches: representing it, hiding it, surviving it, contesting or re-enacting it. I already evoked academic works in women’s history, gender history, and gender studies above. In this chapter, those approaches could include questioning whether there really were an insignificantly small number of women intellectuals and professionals during the relevant time period and in the relevant context, or have many more been ignored, forgotten in archives, neglected in histories, biographies, and other accounts, so that they have become invisible. Answering such questions requires a critical approach towards current historiography, as well as strategies for unearthing hidden or forgotten histories and invisible actors, work currently undertaken also by post-colonial and global historians.³⁴ The aesthetic choices of representing the occasionally discovered presence on the canvas of absence may also evoke alternate or counterfactual histories,³⁵ as well as visual and performative re-enactments ‘pointing at what is missing and cannot be retrieved’.³⁶

A focus on the absence of women and its preconditions, consequences, and meaning implicitly presumes a group, a frame, an ‘epistemic community’ or otherwise described category of *international*

³² Glenda Sluga, ‘Turning International: Foundations of Modern International Thought and New Paradigms for Intellectual History’ (2015) 41 *History of European Ideas* 103–15; see David Armitage, *Foundations of Modern International Thought* (Cambridge: Cambridge University Press, 2012).

³³ Martti Koskenniemi, *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960* (Cambridge: Cambridge University Press, 2001), p. 7.

³⁴ See, e.g., Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton: Princeton University Press, 2000); Arnulf Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (Cambridge: Cambridge University Press, 2014); Onuma Yasuaki, *International Law in a Transcivilizational World* (Cambridge: Cambridge University Press, 2017).

³⁵ See Gavriel D. Rosenfeld, *The World Hitler Never Made: Alternate History and the Memory of Nazism* (Cambridge: Cambridge University Press, 2011) pp. 11–12; Richard J. Evans, *Altered Pasts: Counterfactuals in History* (London: Little, Brown, 2014).

³⁶ Wouter Werner, *Representing Absence: The Use of Re-enactments in Documentary Films on Mass Atrocities* (on file with the author).

criminal lawyers.³⁷ Whom such a group is considered to comprise and why, its inclusions and exclusions, its hierarchies, are all relevant questions, even beyond the tight methodological constraints of prosopography.³⁸ Research efforts to find women benefit from recent research on 'legal lives writing',³⁹ which seeks to understand legal actors as parts of professional communities and analyses the individual roles therein. The narrative perspective from which such 'imagined communities'⁴⁰ are represented also identifies the position of power of those drawing the borders of the community.

Further, writing on women almost by definition becomes an exercise in 'histories from below', in other words efforts to redirect attention from known actors and structures to those which have not been deemed worthy of interest because of their lower position in the hierarchy. Beyond the actors I have chosen to discuss (intellectuals and professionals in law), attention could be further broadened to include the secretaries, assistants, spouses, mothers, and daughters behind influential men. The question could be the degree to which the work of those women, often in the private or semi-private sphere, enabled that of the men with whom they were associated.⁴¹ Such an approach would turn the attention to the delimitations of the private and the public, as well as the related political economies, also the attention economies of historiography and research work in general. Were there men who enabled women's work in international law? As Mary Ellen Waithe writes on women philosophers, '[a]ll women ... had significant connections with male scholars while the obverse is not the case. The parts played – enhancing or distorting – by patrons, fathers, teachers, confessors,

³⁷ See, e.g., Claus Kress, 'Towards a Truly Universal Invisible College of International Criminal Lawyers', *FICHL Occasional Paper Series*, No. 4, available at www.legal-tools.org/doc/82bf10/; Andrea Bianchi, 'Epistemic Community', in Jean d'Aspremont and Sahib Singh (eds.), *Concepts of International Law* (Cheltenham: Edward Elgar, 2019).

³⁸ See, e.g., Katherine Keats-Rohan (ed.), *Prosopography Approaches and Applications: A Handbook* (Oxford: Unit for Prosopographical Research, Linacre College, University of Oxford, 2007).

³⁹ See Linda Mulcahy and David Sugarman (eds.), *Legal Life Writing: Marginalized Subjects and Sources* (Hoboken: Wiley Blackwell, 2015).

⁴⁰ Benedict Anderson, *Imagined Communities* (London: Verso, 1991): 'imagined because the members of even the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion.' p. 6.

⁴¹ See, e.g., Hilary Callan and Shirley Ardener (eds.), *The Incorporated Wife* (London: Croom Helm, 1984); Cynthia H. Enloe, *Bananas, Beaches and Bases: Making Feminist Sense of International Politics* (London: Pandora Press, 1989).

preachers, scribes and assistants, need to be understood for a full comprehension'.⁴²

A related but separate set of research questions could explore the causes and consequences of women's absence – and invisibility – and its temporal and geographical continuities and breaks. Any analysis of these questions should, by implication, also lead one to interrogate past and current structures, mechanisms, and practices that have supported and still support the sex and gender difference in the professional field, ranging from legal education and academic research to institutions, professional networks, bar associations, benches, and publication policies to celebratory traditions. The microhistories I turn to in the following have been stirred by aspects of all the premises and approaches mentioned.

15.3 Two Microhistories

15.3.1 *The 'Leading Exception'*⁴³: Katherine B. Fite

Justice Jackson, with a party that included Miss Katherine Fite (a State department lawyer assigned to assist the Justice), had noticed a gleam of metal in the debris. It proved to be a medal attached to a ribbon. With great show of gallantry, Jackson hung the decoration around Miss Fite's neck. There was a chorus of demand for translation of the German legend on the medal: 'Order of Motherhood, Second Class'.⁴⁴

Katherine Boardman Fite (1904–89) has recently surfaced as the most visible of the women lawyers working at the IMT in Nuremberg. She was a US Department of State lawyer serving at the Office of the Legal Adviser, and was seconded to the team of Justice Jackson, US Chief of Counsel, in 1945. Her role concentrated in particular on the early phases of the tribunal: the negotiations of the London Agreement and preparations for the trial. Fite periodically assisted Jackson's staff in Washington until he relocated to London, where Fite joined the team in mid-July 1945. In London, she was present at a few sessions of the Allied negotiations on the London Agreement, but she spent most of her time doing

⁴² Joan Gibson and Mary Ellen Waithe, 'Introduction', in Mary Ellen Waithe (ed.), *A History of Women Philosophers, Volume II* (Dordrecht: Kluwer Academic Publishers, 1989) p. xxix.

⁴³ Barrett, 'Katherine B. Fite', pp. 14.

⁴⁴ Taylor, *The Anatomy*, describing a visit to Hitler's Reich chancellery in 1945, p. 127.

preparatory work related to the drafting of the IMT Charter.⁴⁵ She made new contacts, and at least once took part in a meeting of the United Nations War Crimes Commission.⁴⁶ From London she accompanied Justice Jackson and a delegation of US, British, and French officials on a preparatory trip to Nuremberg, to see the planned courthouse and the city.⁴⁷ She also travelled with Jackson to Berlin, Cecilienhof in Potsdam – where the Potsdam agreement was negotiated – Frankfurt, Cambridge – to meet Professor Lauterpacht – and elsewhere.⁴⁸

When she moved to Nuremberg in early September 1945, she helped to prepare the charges and the trial against the Reichskanzlei, by planning and attending interrogations of suspects. She only rarely sat in during the proceedings of the court after the opening session of 20 November, claiming a lack of time due to the heavy workload but also noting that 'the courtroom presentation is dull and tedious'.⁴⁹ Blaming bad organisation and low morale, she left Nuremberg in late December 1945, and thus did not participate in any major part of the trial. Back at the State Department in Washington, she followed the proceedings from a distance, writing an official summary of the IMT's judgment⁵⁰ and continuing to keep in touch with Jackson and other staff in Nuremberg at reunions in the USA.

Katherine B. Fite features in three recent articles, all of which rely mainly on the same source: her file in the archives of the Harry S. Truman Library.⁵¹ The file includes Fite's correspondence with her parents, friends, and colleagues during her stay in Nuremberg and shortly

⁴⁵ Letter 19 August 1945 by Katherine B. Fite to her parents, 'War Crimes Trials File', Katherine Fite Lincoln Papers, Truman Presidential Museum & Library, Independence, MO (all the letters in the following notes are by Fite to her parents from this archive) and Barrett, 'Katherine B. Fite', p. 17.

⁴⁶ Letter 19 August 1945.

⁴⁷ Letter 23 July 1945. See also Barrett, 'Katherine B. Fite', p. 18. Taylor, *The Anatomy*, pp. 64–5, describes the trip but does not mention the presence of Fite.

⁴⁸ Letters 23 and 27 July, and 5 August 1945. On the visit to Cambridge, see also Philippe Sands, *East West Street: On the Origins of 'Genocide' and 'Crimes Against Humanity'*, p. 111–3.

⁴⁹ Letter 9 December 1945. See also, letter 21 October 1945; letter 20 November 1945; letter 27 November 1945.

⁵⁰ See Katherine B. Fite, 'The Nürnberg Judgment: A Summary', XVI Department of State Bulletin No. 392, 5 January 1947, at 9–19, reprinted as *U.S. Dept. of State Publication 2727*, European Series (1947) (referred to by Barrett, 'Katherine B. Fite').

⁵¹ See Barrett, 'Katherine B. Fite'; Amann, 'Politics and Prosecutions'; and Amann, 'Portraits'. For the archives, see 'War Crimes Trials File', Katherine Fite Lincoln Papers, Truman Presidential Museum & Library, Independence, MO, an index of which is available at www.trumanlibrary.org/hstpape/lincoln.htm.

thereafter, as well as a short biographical note and a few official documents concerning her secondment. These were the parts of the file I was able to access. This highlights an important epistemological aspect that framed my tentative effort to include Fite as an intellectual figure amongst other figures discussed in this project: Fite did not write legal journal articles or commentaries on international criminal justice (other than the summary mentioned above). She never published autobiographical accounts of her experiences in London and Nuremberg, or Washington, for that matter. She was not an academic and she is barely visible in official documents, commentaries, and memoirs – Telford Taylor's much-read memoir, for example, contains only two minor references to her.⁵²

The most substantial information on Fite and her opinions on the Nuremberg IMT stems from her private correspondence, written in a casual, vivid, and intimate style. Her views on the drafting of the indictment and her accounts of confrontations with the accused and witnesses have to be extracted from her letters, in which she also shares her concerns about her hair and her diet, begging her parents for winter stockings and towels. Another reason why her letters are thin as sources on the trial might be that she may have been worried about confidentiality of mail in the 1945 conditions of occupation, refraining from adding much detail about the files on which she worked. The question of sources makes a striking difference compared to the other characters discussed in the project, who published academic, professional works and/or memoirs, and are not hard to find in legal and historiographical studies. Their notoriety and dominance, in fact, tends to cumulate, correlating closely with the number of positions they occupied and the honours that they were awarded. I highlight this difference as an example of how research on the *first and only* has to cope with 'double marginalisation', that is, an inferior position of women both in their life contexts and in the sources that remain of them.⁵³ A further aspect I pay attention to is the intertwinement of the public and the private lives in the rarer and often private sources one can access on women, and to which value judgements of minor legitimacy as 'diaries and letters only' are attached.

Another key aspect that emerges in particular from John Q. Barrett's warm-hearted article on Fite – who 'was, like Jackson, smart, outspoken,

⁵² Taylor, *The Anatomy*, p. 127 and 215.

⁵³ See Rosemary Auchmuty, 'Recovering Lost Lives: Researching Women in Legal History' (2015) 42 (1) *Journal of Law and Society* 34–52; Mulcahy and Sugarman, *Legal Life*.

active, independent, and a very fine lawyer'⁵⁴ – is the narrative focus on her exceptionality. Barrett explains that he searched through long descriptions of how the Nuremberg trials came about, preparations both in the USA and in international encounters, and even considering the defendants at the IMT; he finds 'not one woman'.⁵⁵ Barrett reminds his readers of how 'no woman was permitted to address the International Military Trial',⁵⁶ after which 'one leading exception' is introduced: Katherine Fite. Barrett underlines how Fite's 'employment by Justice Jackson was, because of her gender, a notable event'.⁵⁷ No matter that Fite may have been very similar to a large majority of the US staff involved in the post-World War II justice effort with regard to all other imaginable criteria such as social status, 'race', education, employment, religion, cultural preferences, political opinions, and worldview. These aspects do not count next to her gender that sets her apart. The dilemma is to see whether Fite would ever have been written on, to start with, had she been a man.

What was the background of this exceptional woman? The way in which it is accounted for also seems to relate to her gender. Fite was born in Boston, and she obtained a degree in law from Yale in 1930.⁵⁸ As Barrett reports, Fite's 'father chaired the political science department' of Vassar College.⁵⁹ He does not mention the professional situation of her mother, which is not specified in Fite's biographical note in the archive either. Both of the above-mentioned international lawyers, Bastid and Wambaugh, are also represented as daughters of their fathers, professors of law,⁶⁰ and Goetz was the daughter of a lawyer, too.⁶¹ Barrett then turns to Katherine Fite's marital situation. She 'was single until age of fifty-two

⁵⁴ Barrett, 'Katherine B. Fite', p. 16.

⁵⁵ Barrett, 'Katherine B. Fite', p. 13.

⁵⁶ Barrett, 'Katherine B. Fite', p. 14 fn 6, refers to Joseph E. Persico, *Nuremberg: Infamy on Trial* (New York: Viking, 1994), p. 212 describing a radio report on this subject by CBS reporter Howard K. Smith.

⁵⁷ Barrett, 'Katherine B. Fite', p. 15, referring to *New York Times*, 'Woman Joins Staff of War Crimes Group', 11 July 1945, p. 4.

⁵⁸ See the 'Biographical Sketch' at Katherine Fite Lincoln Papers, www.trumanlibrary.org/hstpaper/lincoln.htm.

⁵⁹ Ibid; Barrett, 'Katherine B. Fite', p. 14.

⁶⁰ See, Lafon, 'Suzanne Bastid-Basdevant'; Wambaugh 'moved to the intensely academic environment of Cambridge, Massachusetts, when her father Eugene Wambaugh, a specialist in constitutional and international law, was appointed to the faculty at Harvard Law School', www.encyclopedia.com/women/encyclopedias-almanacs-transcripts-and-maps/wambaugh-sarah-1882-1955.

⁶¹ Amann, 'Cecilia Goetz', p. 609.

(1957), when she married Francis French Lincoln and became Katherine Fite Lincoln'.⁶² Portrayals of many early women professionals, authors, activists, and scholars seem to interweave their private and public lives more closely than those of men: questions of marriage, motherhood, and childcare are addressed, and the choices made by the individual appear to determine both her career and character more strongly than in the case of men.⁶³ Anthea Taylor argues that even today, '[b]eing partnered remains crucial to women's ability to become viable (and visible) subjects, and therefore viable citizens'.⁶⁴ Fite, an international lawyer at the age of forty in London and Nuremberg is pictured as the prodigious single woman, a devoted daughter writing letters about her adventures and successes to her parents. The reader may not be able to resist wondering whether an international lawyer and a wife and mother would have left the USA, given the uncertain conditions in Europe in 1945. The fact that husbands and fathers very often did so does not seem to require any particular attention. Parenting and career were mutually exclusive choices only for women. Women also tend to get described physically to a greater extent than men do. At the time of Fite's assignment in Nuremberg, media stories on women lawyers did not omit commentary on their looks, hair, and clothes: relief was palpable when they still looked like women, despite their professional role.⁶⁵

The greatest challenge in including Katherine Fite in this project relates to the difficulties of defining her professional rank, role, individual professional output, and opinions. Barrett attempts to describe her hierarchical position and importance, deploring the lack of an organisational chart: she was near (below) top lawyers who 'served near the top ranks'. She thus appears to be on the third level down from Jackson, and 'both Jackson and Alderman leaned on her regularly'.⁶⁶ It is mentioned how she brought historical and professional knowledge of diplomacy, treaty drafting, and negotiation with her from the State Department's Legal Adviser's office. She contributed, for example, to the the analysis of the

⁶² Barrett, 'Katherine B. Fite', p. 15.

⁶³ See, e.g., on Elisabeth Gombel, defence lawyer at Nuremberg, 'Briefe an Elisabeth', *Der Spiegel* 34/1948, 21.08.1948.

⁶⁴ Anthea Taylor, *Single Women in Popular Culture: The Limits of Postfeminism* (Palgrave Macmillan, 2012) p. 3.

⁶⁵ As Tanya Monforte discusses, this expectation has not changed in all contexts, 'Soft Power as Metaphor: The Gender of Security', in Caroline Leprince and Cassandra Steer (eds.), *Women, Peace and Security: Feminist Perspectives to International Security Studies* (Montreal and Kingston: McGill-Queen's University Press, in press).

⁶⁶ Barrett, 'Katherine B. Fite', p. 17.

Kellogg-Briand Treaty, countering the objection that it would be retro-active criminalisation to prosecute German defendants for waging aggressive war.⁶⁷ However, the 'brilliant partner, Col. Benjamin Kaplan', with whom Fite was 'working in tandem'⁶⁸ on the Reich cabinet case, is likely to be a more familiar name than Fite to today's readers.⁶⁹ Colonel Murray C. Bernays wrote in a memorandum to Jackson that Fite 'has done a great deal of work in the documentation and interrogation group under my personal direction. She has brought to our duties unusual understanding of our problems, based upon her long and intense contact with this subject while she was on duty in the Office of the Legal Adviser in Washington.'⁷⁰ By comparison, Taylor, who explains in detail the functioning and structure of Jackson's early team and the negotiation of the London Charter, does not refer to Fite at all in that part of his book.⁷¹

Fite's own accounts of her working days indicate a sharp and critical mind. She is enthusiastic about her new experiences and encounters, yet she remains lucid: 'You don't have a marvellous time in a ruined city, in a hostile country, at a criminal trial where you look out of the window all day and interrogate men you hope to hang.'⁷² When she 'engineered an interrogation with Frick', she describes 'a ratty, shifty looking man'⁷³ and her mixed feelings: 'You find yourself feeling sorry for the devils [...] but then you stop and think of the fiendish mass exterminations.'⁷⁴ Of her encounter with von Ribbentrop, she states: 'there he was, the great Ribbentrop, on exhibit like a lion or a tiger'.⁷⁵ The interrogation of Keitel was 'one of the most dramatic scenes I have ever seen enacted'.⁷⁶ What

⁶⁷ Barrett, 'Katherine B. Fite', pp. 17–18.

⁶⁸ Barrett, 'Katherine B. Fite', p. 23.

⁶⁹ The index of Taylor's 'The Anatomy' contains 12 references to him. See also, e.g., David Childs, 'Benjamin Kaplan: Judge who Played a Crucial Role in Preparations for the Nuremberg trials', *Independent*, 9 September 2010, www.independent.co.uk/news/obituaries/benjamin-kaplan-judge-who-played-a-crucial-role-in-preparations-for-the-nuremberg-trials-2075318.html; Bruce Weber, 'Benjamin Kaplan, Crucial Figure in Nazi Trials, Dies at 99', *New York Times*, 24 August 2010, www.nytimes.com/2010/08/25/us/25kaplan.html.

⁷⁰ Memorandum to Mr. Justice Jackson, dated 17 August 1945, in Katherine Fite Lincoln Papers, www.trumanlibrary.org/hstpaper/lincoln.htm.

⁷¹ Taylor, *The Anatomy*, chapters 3 and 4.

⁷² Letter 14 October 1945.

⁷³ Letter 14 October 1945.

⁷⁴ Letter 14 October 1945, see also letter 19 November 1945.

⁷⁵ Undated letter, September 1945.

⁷⁶ Letter 1 October 1945.

did the other side in these interactions, in other words the accused, think of the few women professionals they encountered, such as Fite? The Nuremberg prison psychologist Gilbert's account of the IMT accused describes their attitudes towards women in general as varying from spiteful contempt to lustful sexism or chivalrous posturing.⁷⁷ This would be an interesting avenue to follow, but to my regret it is beyond the scope of this chapter.

After her first couple of months of enchantment with the personality of Justice Jackson, Fite grew critical of him: 'I think the Justice has made a mistake by giving the papers to understand that only the U.S. means business [...] the other 3 have now ganged up to put the heat on us and maybe rush us through.'⁷⁸ Jackson was 'not a strong man', and 'the indictment was rushed through'.⁷⁹ Fite was a meticulous lawyer, disappointed with 'careless work' and 'office politics': 'some time ago I found a very serious error in punctuation in the signed [London] charter which was, of all places, in the section of crimes vs. humanity – i.e. the Jews, and quite changed the sense'.⁸⁰ On the same occasion, she dismisses the US judge Francis Biddle as 'a weak appointment'.⁸¹ She also deplores how 'our case' – that is, the one against the Reich cabinet – will be headed by 'a most incompetent man [who] has been put second in command' by Jackson.⁸²

How did Katherine Fite experience her role as one of the very few women in the professional ranks at the IMT? She comes across as self-confident, if very conscious of her particular situation. The letter she wrote about her first visit to Nuremberg with Jackson in July 1945 describes an improvised working meeting with Jackson and General Betts, the judge-advocate in the European theatre of operations and his assistant, Colonel Fairman: 'We went over a bit of business and I felt as tho [sic] I were in very high quarters, but spoke up nevertheless.'⁸³ Fite acknowledges to her parents she is getting special treatment 'by virtue of my female and perhaps State Dept [Department] status'.⁸⁴ She explains:

⁷⁷ G. M. Gilbert, *Nuremberg Diary* (New York: Farrar, Straus and Company, 1947).

⁷⁸ Letter 8 October 1945.

⁷⁹ Ibid.

⁸⁰ Ibid. Sands, *East West Street*, tells how 'someone noticed a minor discrepancy in the texts of Article 6(c) on crimes against humanity, the problem of a semi-colon. [...] The consequence could be significant.' p. 113.

⁸¹ Ibid.

⁸² Letter 16 December 1945.

⁸³ Letter 23 July 1945.

⁸⁴ Ibid.

[T]ho [sic] being the only woman on the staff has many drawbacks, from the social point of view it pays. A masculine society is eager for women and we have the added advantage of being in civilian clothes. [...] My army colleagues are, I am sure, jealous of my trips, for I do go places and travel in high circles but they are very gallant about it.⁸⁵

At the same time, Fite is ambivalent about her special status. She refers to the interview with the New York *Herald Tribune* for the 'Woman's page' as 'a horrible experience'.⁸⁶ Later in Nuremberg and describing her active social life, she notes: 'You see the panel of eligible women for such parties is small. So I always get there and usually get a seat of honour. It's fun, and also an effort when you are tired – as I am today.'⁸⁷ Fite complains how she 'lack[s] congenial feminine companionship', and is happy to make friends with Aline Chalufour, a French lawyer.⁸⁸

In terms of the intellectual history of international criminal justice, what particular role could Fite be claimed to have carried out? Was she an insider or an outsider, and did her gender matter? As I have mentioned, she published hardly any work that could be referred to in the scholarship or case law. She was not a member of academic or professional associations such as the AIDP. She seems to have purposely avoided contact with some of the activist milieu, such as Dr Ecer, 'an international trouble-maker'.⁸⁹ Even if she is occasionally sharply critical of Jackson and the whole effort in her correspondence, she generally confined herself to the US team and her Department of State affiliation. In her context and time, how did she relate to concerns that nowadays characterise feminist approaches to international (criminal) law? Was she, the daughter of a white North American professor, flying around Europe with Justice Jackson and attending 'long dress parties' and concerts, so far removed from the experiences of the (women) victims that she did not feel any special concern about them?

Posing such questions today is anachronistic and perhaps also nasty. As is known, the victimisation of women was not explicitly taken up at the IMT. Thus far I have not come across any particular signs that issues nowadays considered as gender-related in the prosecution of international crimes were on Fite's mind while she was working in Jackson's team. In her letters, her reflections on being a woman relate exclusively to her personal experiences in a masculine working environment. She

⁸⁵ Letter 5 August 1945.

⁸⁶ Ibid.

⁸⁷ Letter 11 November 1945.

⁸⁸ Letter 14 October 1945.

⁸⁹ Letter 3 December 1945.

simply does not seem to identify with women's victimhood in any manner that would suggest a special interest or bias. A clumsy comparison might be made to lawyers of Jewish background who were occasionally suspected of bias when dealing with Nazi crimes. The example of Georg Schwarzenberger, later a famous critic of international criminal law who was ousted from Germany in 1934, is illustrative.⁹⁰ When asked why he did not personally participate in the intellectual efforts to bring about the Nuremberg trials, Schwarzenberger said: 'A victim should not become the judge.'⁹¹

Katherine Fite and other US women lawyers like her with roles in post-World War II international criminal justice did not appear to feel any particular connection to victimhood. Fite rather seemed to have felt she was in a moral position to judge, untroubled by the dilemma of victor's justice. She identified with her country's politics and assumed the special standing of the USA in the world. When the USA launched its atomic bombs on Japan, Fite commented to her parents: 'I'm torn between wishing we hadn't been the ones to launch it and being so profoundly thankful it has ended the war. I suppose it's not worse to kill civilians one way than another.'⁹² Upon returning to the USA, she wrote: 'Europe is a sad worn out continent. [...] The U.S. is sitting atop the world. [...] We have to run the world – but the vast majority have no idea what the rest of the world is like. And how can equilibrium be maintained between wealth and energy on the one hand and poverty and exhaustion on the other?'⁹³

15.3.2 *The Woman 'With a Man's Brain'*⁹⁴: Rebecca West

*Tomorrow dinner will meet Rebecca West and will make English love if she hasn't grown too fat.*⁹⁵

⁹⁰ See Stephanie Steinle, *Völkerrecht und Machtpolitik – Georg Schwarzenberger (1908–1991)* (Baden-Baden: Nomos, 2002).

⁹¹ Stephanie Steinle, 'Georg Schwarzenberger (1908–1991)', in Jack Beatson and Reinhard Zimmermann (eds.), *Jurists Uprooted: German-Speaking Emigré Lawyers in Twentieth Century Britain* (Oxford, Oxford University Press, 2004), p. 672. See also.

⁹² Letter 12 August 1945.

⁹³ Letter 28 December 1945.

⁹⁴ Carl Rollyson; George Bernard Shaw on West (find Ref.).

⁹⁵ The U.S. Judge Francis Biddle's notes from 21 July 1946, as quoted by Taylor, *The Anatomy*, pp. 547–8.

Unlike Katherine Fite, Rebecca West (born Cicely Fairfield in 1892, died Dame Rebecca West in 1983) published a large number of books and articles. She was a famous author, literary critic and journalist, a controversial celebrity of her time, and her works are still read and studied today.⁹⁶ She was not a lawyer, she never had any official function in the institutional practice of international criminal law, and she did not specialise in international criminal justice – it was merely one of the many fields about which she wrote. However, she did publish perhaps the most astute and lively contemporary analysis of the Nuremberg IMT and of questions of war and justice beyond the trial, based on her presence as a reporter for the *New Yorker*. She went on to give a critical analysis of the Allies' post-World War II justice, occupation, and its aftermath in essays that were compiled in *A Train of Powder*.⁹⁷

Tentatively including her as a character in an intellectual history of the discipline again means reaching beyond the core. In my experiment in this chapter, I justify it by her notoriety and the quality of her writing. Also, her background, profile, and approach to the Nuremberg trials contrast interestingly with Fite's. West's childhood was overshadowed by financial difficulties and an unstable, and later absent, father. She grew up under the influence of her mother and sisters. She had no formal university education, but was keen to learn autonomously, and started to publish, with her work attracting attention, before her twenties. Written in her fifties, West's impressions and criticisms of the Nuremberg trials were then meant to be read by people other than Mum and Dad: she addressed a broad audience with a literary style based on research. West was not a civil servant bound by the codes and customs of professional conduct, as Fite was in the State Department. Nevertheless this 'George Bernard Shaw in skirts'⁹⁸ also had to face her difference: her gender. West's biographies depict her as a 'feminist' and a somewhat troubling 'free woman', paradoxically considering that she chose not to disclose the fact that she gave birth unmarried, and despite the fact that she appears to have desired and later appreciated marriage. Her Nuremberg reports do not dwell on her personal concerns with daily life or on the experience of being in the minority sex as a court reporter. She never

⁹⁶ There are three biographies on West, see, Victoria Glendinning, *Rebecca West, A Life* (New York: Alfred A. Knopf, 1987); Carl Edmund Rollyson, *Rebecca West: A Life* (New York: Scribner, 1996); Lorna Gibb, *West's World: The Extraordinary Life of Dame Rebecca West* (London: Macmillan, 2013).

⁹⁷ Rebecca West, *A Train of Powder: Six Reports on the Problem of Guilt and Punishment in Our Time* (Chicago: Ivan R. Dee, 1955).

⁹⁸ Rollyson, *Rebecca West*, jacket text.

asks why there were no women amongst the judges, visible members of the prosecutorial teams or defence lawyers. Nor did she focus on the victimisation resulting from sexual or gendered violence, apart from a few passages referring to the struggles of German women during the early phases of the occupation, specifically in Berlin.⁹⁹

Although not a lawyer, West did not shy away from analysing the trial and its actors, or the broader stakes of law, war and justice – the winners and losers, the occupiers and the occupied. She was sensitive to the irony of the Soviet judge reading out the verdict that condemned the Nazis for deportation, ‘for taking men and women away from their homes and sending them to distant camps where they worked as slave labour in conditions of great discomfort’.¹⁰⁰ She observes the differences between the four powers co-organising the trial, pointing out ‘temperamental and juristic differences among the nations’.¹⁰¹ She suggests, for example, that the perception among some spectators that the ‘tribunal was soft and not genuinely anti-Nazi’¹⁰² because not all of Nazi Germany’s seven organisations were condemned, was attributable in part to the ‘silver voice untarnished by passion’¹⁰³ of the caricature upper-class British judge whose turn it was to read out that part of the judgment.

West’s general appreciation of the IMT and of post-World War II international criminal justice more broadly is mixed. She acknowledges that the trials had to take place: ‘the Nazi crimes of cruelty demanded punishment’.¹⁰⁴ Occasionally, she even recognises the IMT trial as ‘a step farther on the road to civilization’¹⁰⁵ – referring to the admirals’ case on submarine warfare. She reads their acquittal by the IMT as a confession by the Allies, a ‘*nostra culpa* of the conquerors’ for ‘the British and Americans had committed precisely the same offence’.¹⁰⁶ At the same time, she critically observes how this highly relevant sign of honesty

⁹⁹ At the time, the rapes and forced prostitution of women in occupied Germany were not addressed openly in public. See the belatedly well-known (and controversial) diary by Anonyma, *Eine Frau in Berlin* (Frankfurt/M., Eichborn, 2003); and Atina Grossmann, ‘The “Big Rape”: Sex and Sexual Violence, War, and Occupation in German Post-World War II Memory and Imagination’, in Karen Hagemann and Sonya Michel (eds.), *Gender and the Long Postwar* (Baltimore: John Hopkins University Press, 2014).

¹⁰⁰ West, *A Train of Powder*, p. 51.

¹⁰¹ Ibid, p. 47.

¹⁰² Ibid, p. 47.

¹⁰³ Ibid, p. 48.

¹⁰⁴ Ibid, p. 49.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid.

'evoked no response at the time, and it has been forgotten'.¹⁰⁷ She attributes this to the character of international law, which 'as soon as it escapes from the sphere of merchandise . . . is a mist with the power to make solids as misty as itself'.¹⁰⁸ She points in particular to its apologetic and utopic facets, 'the dangers of international law', in the example of how the argument of protecting minorities (the Germanic populations) was first used by Hitler to justify his invasions of Germany's neighbours, and then used again by the Allies to justify the trial she witnessed.¹⁰⁹

Her last report, published in 1954, reads like a general commentary on Allied post-World War II justice beyond the IMT. She deplores the fact that the trials' records are less than accessible to the general reader: they are too lengthy, not fully translated or available (the Soviet part), and costly. For West, this aggravated how 'these trials have set up a dozen itching abscesses of ignorance and hatred in the public mind'. Much of that situation, in her opinion, related to 'a real national difference, not to be wiped out by an improvisation such as the Nuremberg trial' in the procedural laws between the continental versus the English and American traditions.¹¹⁰ For West, the unaccustomed roles and balance of power of the actors in the trial and the detention of the accused before and during the trial 'revolted' the accused and many Germans, giving them the impression of a hideous continuity with the Nazi regime's disregard of the rights of the accused.¹¹¹ The noble goal, the triumph of 'the Rule of Law in all its beauty', was not attained.¹¹²

One might be tempted to picture West as a forerunner in the interdisciplinary critique of international criminal justice, a sharp woman on the correct side of history, ahead of others. However, West did not, for example, question the death penalty as such. In the context of Nazi crimes and the general overwhelming presence of violence and death during the war and its aftermath, very few individuals openly objected to it for ethical or legal reasons. At the same time, she did not take the death penalties issued by the IMT lightly. West refers to 'a profound aversion' to the capital punishment that, she believed, was shared by many who had participated in the trial for a longer period, seeing 'the man in the

¹⁰⁷ Ibid.¹⁰⁸ Ibid.¹⁰⁹ Ibid, p. 50.¹¹⁰ Ibid, p. 240.¹¹¹ Ibid, pp. 240–3.¹¹² Ibid, p. 240.

murderer out'.¹¹³ She expected the punishments to be rational and moderate: 'For when society has to hurt a man it must hurt him as little as possible and must preserve what it can of his pride, lest there should spread in that society those feelings which make men do the things for which they get hanged.'¹¹⁴ She consistently took a clear-cut position on media practices at international criminal trials. Contrary to some journalists and historians who regretted the gap in the film record of the trial, West agreed with the court, which had decided that the defendants should not be photographed during the sentencing session: 'It might be right to hang such men. But it could not be right to photograph them when they were being told that they were going to be hanged.'¹¹⁵

West's critical approach and personal style appears as a precursor to Hannah Arendt's later (and more elaborate) report of the Eichmann trial.¹¹⁶ West's work could also be compared to that of another woman author and scholar of her time, Freda Utley (1898–1978), who similarly commented on the problems with procedural law, pre-trial detention, the weak position of the defence, and the rejection of the trials by the German public. Utley, like West, was not a lawyer, having a degree in history. Unlike West, she did not attend the Nuremberg trials, but was a correspondent in Germany in 1948. Her book *The High Cost of Vengeance* (1948) is extremely critical of Allied post-World War II justice and the occupation policy in general. She specifically addresses the IMT, the American Nuremberg trials, and the Dachau trials. In comparison to West's sweetly ironic tone, Utley's work is more like an accusation or a pamphlet – aggressive and bitter. Biographical commentaries on Utley refer to her suffering in, and because of, Stalin's Soviet Union, in particular to the detention and death of her Russian husband.¹¹⁷ Her association with McCarthyism had an effect on how her work was received, both at the time and in hindsight. In comparison, West's anticommunism was perhaps less programmatic, but it also tainted her work in the eyes of many leftists, in particular in the USA.¹¹⁸ In *The High Cost of Vengeance*, Utley openly declares her intent to present a counter-narrative (although without using the word), 'a drop

¹¹³ Ibid, pp. 42, 43.

¹¹⁴ Ibid, p. 41.

¹¹⁵ Ibid, pp. 40–1.

¹¹⁶ In Hannah Arendt, *Eichmann in Jerusalem* (New York: Viking Press, 1964), Arendt does not refer to West's work.

¹¹⁷ For a collection of excerpts, see <http://fredautley.com/>.

¹¹⁸ Rollyson, *Rebecca West*, pp. 284–5.

in the ocean compared to the continuous, and somewhat monotonous, spate of books, articles, newspaper reports, and radio commentary which have by now established an accepted legend'.¹¹⁹ She stated, for example, how:

[c]ompared with the rape and murder and looting engaged in by the Russian armies at the war's end, the terror and slavery and hunger and robbery in the Eastern zone today, and the genocide practiced by the Poles and Czechs, the war crimes and crimes against humanity committed by the Germans condemned at Nuremberg to death or lifelong imprisonment appeared as minor in extent if not in degree.¹²⁰

Such views were provocative, and Utley was accused of revisionism. She also made a virulent and detailed attack on the torture and inhuman treatment of the accused by US officials in the Dachau trials, deploring the euphemism of 'persuasive methods' used by the US authorities to describe the conduct.¹²¹ Her claims concerning Allied torture were extremely marginal at the time, but may strike a chord with today's reader.¹²² Utley is more optimistic about international law than West – if only the law was respected. However, 'we [the Allies, the US in particular] tore up the Atlantic Charter and copied the Nazis in our repudiation of international law'.¹²³ Like West, she does not mention the lack of participation of women in the post-World War II trials, nor does she emphasise their victimisation, except for a passing mention of rape (committed by the Russians). However, Utley's noble and romantic portraits of 'ill-fed but neat' German women under occupation, 'who although they were driven by hunger to become prostitutes, preserved a certain innate decency, and by responding to kindness with affection and loyalty, often won the love of American boys who started out only to enjoy the pleasures which war offers to the victors',¹²⁴ differ from West's nuanced analysis of the 'fraternisation'.

What did Rebecca West contribute to the discipline of international criminal law, and what were her connections to other figures involved? Whereas her readership is likely to have been wider than that of most

¹¹⁹ Freda Utley, *The High Cost of Vengeance* (Chicago: Henry Regnery Company, 1949) p. 302.

¹²⁰ Ibid, p. 182.

¹²¹ Ibid, pp. 182–212, p. 187.

¹²² See, e.g., Tomaz Jardim, *The Mathausen Trial: American Military Justice in Germany* (Harvard University Press, 2012).

¹²³ Utley, *The High Cost*, p. 14.

¹²⁴ Ibid, p. 17.

legal commentaries of the Nuremberg trials, she does not count as a specialist in the field. The traces of her connections to the intellectuals discussed in this book, or to other key figures and institutional actors, are restricted to a particular ‘scandalous’ context.¹²⁵ Apart from the human-interest stories, it is hard to find information about the exact sources, relations and influences on which she based her opinions about post--World War II international criminal justice. It seems clear that West was ready to follow any leads that would ‘throw a bright light on Nuremberg and on the possibilities of affecting human conduct by international action’.¹²⁶ Her conception of international criminal justice oscillated between occasional hope and sheer disappointment, often disguised as irony – she remained distanced, true to her role as an observer, a journalist, and an independent author. One can recognise her soul-mates in today’s scholarship in interdisciplinary approaches that do not shy away from questioning the meaning behind the legal façade and the ritual of highly mediated international criminal trials.¹²⁷ Her observations on the importance and complexity of national differences in procedural law, rooted in varying expectations of justice in different legal cultures, remain pertinent.¹²⁸ To many expert observers, not to mention West’s main concern, that is, the general public in the home states of the accused and the victims, current hybrid procedures in international criminal trials appear lengthy, costly, and incomprehensible.

15.3 What Difference Would It Make?

*She was clearly not a shrinking violet, but her gender brought few new policy perspectives to the Committee.*¹²⁹

*Don’t you tell a soldier he does not know the cost of war!*¹³⁰

¹²⁵ Taylor and West’s biographers engage in a detailed description of a liaison between the US IMT Judge Francis Biddle and West. Further, Justice Jackson is told to have ‘snubbed Rebecca’, see Taylor, *The Anatomy*, pp. 547–8.

¹²⁶ West, *A Train of Powder*, p. 234.

¹²⁷ See, e.g., Christine Schwöbel (ed.), *Critical Approaches to International Criminal Law: An Introduction* (New York: Routledge, 2014); Gerry Simpson, *Law, War and Crime: War Crimes, Trials and the Reinvention of International Law* (Cambridge: Polity, 2007).

¹²⁸ For an example of the same discussion with an *état de lieux* some seventy years later, see Kirsten Campbell, ‘The Making of Global Legal Culture and International Criminal Law’ (2013) 26 (1) *Leiden Journal of International Law* 155–72.

¹²⁹ David P. Forsythe, *The Humanitarians: The International Committee of the Red Cross* (Cambridge: Cambridge University Press, 2005), p. 204, on Denise Bindstedt-Robert.

¹³⁰ An outcry by Lieutenant-General Frank Benson to a woman advisor opposed to a drone strike in *The Eye in the Sky* (UK: dir. Gavin Hood, 2015).

This chapter flags not only the intriguing lack of women but also the apparently minimal – or repressed? – anxiety about it. How is it that one knows so little of women at the dawn of international criminal law and its institutional practice? Why does this absence not attract more attention in this field in which feminist activism and women's professional engagement have recently become both so striking and so vulnerable: striking in the major quantitative growth of women's participation and qualitative rise in their level of responsibility; vulnerable in how what constitutes great progress for many is also subject to claims of riding on essentialist stereotypes of victimisation of (all) women and the particular critique of white women agitating for 'saving brown women from brown men'.¹³¹ In the same time-frame, changes towards women's inclusion have taken place in most if not all other fields of professional expertise, social activity, and academic research. In international law, human rights (the Convention on the Elimination of Discrimination against Women), the law on the use of force, and international criminal law are the key fields of the change.¹³² Amongst them, the institutional practice of international criminal law is where women figure most visibly in positions of responsibility.¹³³ There have been firsts for everything: the chief prosecutors of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court, the president of the International Criminal Court, and a women-only bench.

These changes are typically attributed to two concomitant and inter-related transformations in international law, international relations, and civil society (mainly in the Global North). First, scholarship known today as 'feminist approaches to international law' emerged – painfully, as a contestation – in the early 1990s.¹³⁴ It was argued that women were

¹³¹ Rephrasing Gayatri Spivak, 'Can the Subaltern Speak?' in Cary Nelson and Lawrence Grossberg (eds.), *Marxism; and the Interpretation of Culture* (Urbana: University of Illinois Press, 1988), pp. 271–313.

¹³² For a critical analysis, see, Gina Heathcote, *Feminist Dialogues: Successes, Tensions, Futures* (Oxford: Oxford University Press, 2019).

¹³³ See, e.g., Daniel Terris, Cesare P.R. Romano and Leigh Swigart, *The International Judge: An Introduction to the Men and Women Who Decide the World's Cases* (Waltham, MA: Brandeis University Press, 2007); Nienke Grossman, 'Sex Representation on the Bench and the Legitimacy of International Criminal Courts' (2011) 11 *International Criminal Law Review* 643.

¹³⁴ See Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *The American Journal of International Law* 613; Dorinda G. Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (Washington, D.C.: American Society of International Law, 1993); Dianne Otto, 'Feminist Approaches to International Law', in Anne Orford and Florian Hoffmann (eds.), *The Oxford Handbook of the Theory of International Law* (Oxford: Oxford University Press, 2016).

underrepresented in academic and professional circles, and that this had major substantive consequences. Broader access by women and recognition of their agendas in international law and institutions became a subject of activism. Second, violence in the former Yugoslavia and Rwanda triggered legal and political changes; international criminal law started to attract major interest in academia, civil society, and the media, often with an emphasis on rape and other forms of sexual violence. Feminist approaches found a particular territory in which one could claim that women's experiences were indispensable and unique. International criminal law and more broadly accountability for sexual and gendered violence became a strategic entry point for women lawyers, professionals, and intellectuals in international legal institutions, academia, and policy-making. Yet the entry may not always have been simple.

John Barrett concludes his article on Katherine Fite on a positive note, no doubt meant as a compliment to her and encouragement for today's women: 'She was the kind of talent whose gender I hope today would not be noticed – I hope that she would be like the women among us in the field of international justice: high-level, accomplished persons, professionally indistinguishable from the men.'¹³⁵ This good-willed wish stands in contrast with feminist scholarship in international law. The mere presence of women as a nominal indicator of 'progress' matters little if they remain under pressure to become indistinguishable from men, the thus-far dominating normative model for professionals. Gina Heathcote refers, in the context of law on the use of force, to 'the limitations of strategies centred on adding women to existing institutions: as this does little to challenge the organization's structure or the normative outputs of the institution'.¹³⁶ Instead, 'the incorporation of women's narratives from outside the mainstream of international law to explain, analyse, and challenge the international law on the use of force is necessary'.¹³⁷ Barrett's remark may also come across as implying that some women, in the past or now, are not such 'high-level, accomplished persons' as Fite was; they were or are just quota-women, not living up to expectations built on the male model. Another kind of typical expectation lurks behind David Forsythe's remarks on Denise Bindshedler-Robert at the ICRC, quoted above: the rare woman entering a position of responsibility was failing to bring in through 'her gender [...] new policy

¹³⁵ Barrett, 'Katherine B. Fite', p. 29.

¹³⁶ Gina Heathcote, 'Feminist Perspectives to the Law on the Use of Force', in Marc Weller (ed.), *The Oxford Handbook of the Use of Force in International Law* (Oxford: Oxford University Press, 2015) p. 118.

¹³⁷ Ibid, 119.

perspectives'.¹³⁸ The first and only should first join in the men's game on conditions gendered masculine, exceed them, and then reform the game – preferably making it better for all.

The contradictory expectations of women needing to be both *just like men* yet somehow *different or more* may seem to muddle the sense of research efforts on identifying women's particular place(s) and role(s) in the past. What difference would it make? The interrogation can be split in two: first, what would it mean to bring to light more women in the histories of a discipline; second, what does the entry of women in a field of professional and intellectual activity change? The intuition in both cases is that having more women involved in professional roles would lead to more account being taken of women's experiences than previously. A further intuition is that women's experiences would differ from those of men. Empirical knowledge on how exactly these intuitions would play out is, however, not open to us.¹³⁹ A further complication relates to the situational position of women whose experiences would be considered relevant: there are juxtapositions of 'elite women' versus women understood more broadly.¹⁴⁰

In the legal and policy instruments of current or recent international criminal courts, a particular role professional women are explicitly assigned to relates to expertise on sexual and gendered violence, as well as on counselling and supporting victims.¹⁴¹ Patricia Wald suggests one motivation for this: 'Since women and children are most often the victims of war, it is especially important that women have adequate representation on these international war crimes courts.'¹⁴² Beyond quantitative objectives, one can recognise various expectations on women, such as their capacities for empathy with the suffering and their soothing 'nature' as an intuitive extension of biological motherhood.¹⁴³ As is known, the traditionally protected key

¹³⁸ Forsythe, *The Humanitarians*, p. 204.

¹³⁹ For accounts by or on women professionals in international criminal justice, see Josephine Dawuni and Akua Kuenyehia (eds.), *African Women Judges on International Courts: Unveiled Narratives* (New York, Routledge, 2017); Navanethem Pillay, 'Equal Justice for Women: A Personal Journey' (2008) 50 *Arizona Law Review* 657; Patricia M. Wald, 'Women in International Courts: Some Lessons Learned' (2011) 11 *International Criminal Law Review* 401.

¹⁴⁰ Heathcote, 'Feminist Perspectives', fn. 132.

¹⁴¹ For a detailed analysis, see Louise Chappell, *The Politics of Gender Justice at the ICC* (Oxford: Oxford University Press, 2016) pp. 51–86.

¹⁴² Patricia Wald, 'Myths About Women's Careers in Law' (2013–14) 2 (1) *University of Baltimore Journal of International Law* 12.

¹⁴³ See, e.g., Sara Ruddick, *Maternal Thinking: Towards a Politics of Peace* (Boston: Beacon Press, 1995); Maria Drakopoulou, 'The Ethic of Care, Feminist Subjectivity and Feminist Legal Scholarship' (2000) 8 *Feminist Legal Studies* 199, 200.

subject of humanitarian law was the soldier either in combat or *hors de combat* for particular reasons, whereas later changes in law and institutional practice have brought civilians to the fore.¹⁴⁴ The expectation of women's special expertise has been argued to rest on the essentialist notions of women's interests and vulnerabilities – eventually victimhood – in direct opposition with the equality claims.¹⁴⁵ There are signs that the practice – and politics – of international criminal justice has generally become more attuned to sexual and gendered violence, beyond heteronormative conceptions.¹⁴⁶

Another quest behind the expectation that women as prosecutors, judges, academics or diplomats would make a difference relates to the idea of moral leadership by women, again based on nature, culture, and/or experience of women. Pacifism, or more generally expressed moral concern for the future of humanity, are considered feminine – even Adolf Hitler scorned the 'waving of olive branches and tearful misery-mongering of pacifist old women'.¹⁴⁷ An alternative – presumably superior – set of values that dismisses male morality and condemns the devastations created by male-driven advances in technology, politics, law and other fields that men have traditionally dominated, as well as assumed male ideologies such as nationalism, has been and remains present in some feminist movements and ideologies.¹⁴⁸

¹⁴⁴ Judith Gail Gardam, 'The Law of Armed Conflict: A Gendered Regime?' in Dorinda Dallmeyer (ed.), *Reconceiving Reality: Women and International Law* (Washington, D.C.: American Society of International Law, 1993); Helen Kinsella, *The Image Before the Weapon: A Critical History of the Distinction Between Combatant and Civilian* (Ithaca: Cornell University Press, 2011).

¹⁴⁵ See, e.g., Janet Halley, 'Rape in Rome: Feminist Interventions in the Criminalization of Sex-Related Violence in Positive International Criminal Law' (2008) 30(1) *Michigan Journal of International Law* 1–123; Kiran Kaur Grewal, 'International Criminal Law as a Site for Enhancing Women's Rights? Challenges, Possibilities, Strategies' (2015) 23 (2) *Feminist Legal Studies* 149; Karen Engle, 'Feminisms and Its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina' (2005) 99 (49) *The American Journal of International Law* 778; Doris Buss, 'Performing Legal Order: Some Feminist Thoughts on International Criminal Law' (2011) 11 *International Criminal Law Review* 409. Beyond international criminal law, see Iris Marion Young, 'The Logic of Masculinist Protection: Reflections on the Current Security State' (2003) 29 (1) *Signs: Journal on Women in Culture and Society* 1.

¹⁴⁶ See, e.g., Kimi Lynn King and Megan Greening, 'Gender Justice or Just Gender? The Role of Gender in Sexual Assault Decisions at the International Criminal Tribunal for Former Yugoslavia' (2007) 88 (5) *Social Science Quarterly* 1049; Kimi L. King, James D. Meernik and Eliza G. Kelly, 'Deborah's Voice: The Role of Women in Sexual Assault Cases at the International Criminal Tribunal for the Former Yugoslavia' (2017) 98 *Social Science Quarterly* 548; Grossman, 'Sex Representation'.

¹⁴⁷ Hitler, *Mein Kampf*, as referred to by Gilbert, *Nuremberg Diary*, p. 115.

¹⁴⁸ For discussion, see, e.g., Lynne Segal, *Is the Future Female? Troubled Thoughts on Contemporary Feminism* (London: Virago Press, 1987); Alexandra Brodsky and Rachel Kauder Nalebuff (eds.), *The Feminist Utopia Project* (New York: The Feminist Press, 2015).

An author who was active during the period of our research project, Virginia Woolf, famously underlined the senselessness of 'the male world of aggression, uniforms, and glory'.¹⁴⁹ In *Three Guineas*, written as she was about to witness a world war for the second time, she tried to produce a woman's (or rather, audaciously, *the women's*) reply to the question: 'how shall we prevent war?' Woolf proposed an 'Outsiders Society' based on differences in values and desires, autonomous and separate from bloody patriarchy.¹⁵⁰

The dream of an alternative, less violent society, locally and/or globally, still can be identified as one of the leitmotifs of feminisms, also in international law.¹⁵¹ Tempting and occasionally plausible as the alternative appears, it also may have served to perpetuate the exclusion of women, if not a self-inflicted evasion of some political and professional fields and contexts: 'The dominated can tell stories, they can fantasize, they can create Utopia, but they cannot devise the means of getting there. They cannot make use of maps, plan out the route, and calculate the odds.'¹⁵² In the context of international criminal law, arguments positing women's moral superiority in rejecting war may have correlated with claims about the lack of women's professional experiences in the military and of their leadership in situations of crisis. Katherine Fite and Rebecca West were involved in international criminal justice just a few years after Virginia Woolf wrote: 'scarcely a human being in the course of history has fallen to a woman's rifle'.¹⁵³ Technological warfare with automated and *unmanned* systems have since done away with expectations of what is physically required for the conduct of war. Still, the claim of a lack of experience of life and the world as broad as that of men haunts women. The lack of such experience, gendered masculine, may be taken to stand for a lack of credibility in assuming positions and making decisions. In the context of international criminal justice, such decisions concern the legality of war and the criminality of a particular conduct in using force, a minefield in which neutrality may stand for ignorance and involvement

¹⁴⁹ Elaine Showalter, *A Literature of Their Own* (London: Virago, 2009), p. 241. Woolf was ambivalent about the word 'feminism', if not the movement altogether, see, e.g., Woolf, *Three Guineas*, pp. 101–2.

¹⁵⁰ Woolf, *Three Guineas*, e.g., pp. 109–14.

¹⁵¹ For discussion, see, e.g., Hilary Charlesworth, 'Are Women Peaceful? Reflections on the Role of Women in Peace-Building' (2008) 16(3) *Feminist Legal Studies* 347; Barbara Ehrenreich, 'Feminism's Assumptions Upended' (2007) 24(1) *South Central Review* 170.

¹⁵² Sheila Rowbotham, 'Women's Liberation and the New Politics', in Michelene Wandor (ed.), *The Body Politic: Writings from the Women's Liberation Movement in Britain 1969–1972* (London: Stage 1, 1972), p. 9.

¹⁵³ Woolf, *Three Guineas*, p. 6.

for entanglement – as critics purport to argue. As recent scholarship underlines, however, such reductive narratives of women's involvement with decision-making on violence and use of force are a false necessity.¹⁵⁴

Finally, when posed by the intellectuals and professionals of today, the question 'what difference would it make' is part of a quest for the 'origins' of women in the professional sphere, of their place and appurtenance in an imagined lineage and tradition. It becomes an interrogation of their experienced or perceived legitimacy. As this chapter suggests, going back in time women in important positions in histories soon become rare. The few that surface tend to appear small in comparison with other figures of their time. The past looks empty or hostile to orphans lacking 'mothers and grandmothers in the profession'.¹⁵⁵ How to canalise the desire to possess one's history, take/make portraits of early women and squeeze them into the family album of a 'college of international criminal lawyers',¹⁵⁶ crowded with accomplished men? Recent methodological inventions and revolts that may facilitate the discovery and visibility of women by adjusting the criteria of belonging, changing the zoom, or selecting a new frame, are tempting and creative. The challenge that remains is to walk away from mourning and melancholia towards the recognition and inclusion of women, without collapsing into essentialism, revisionism, or hagiography. Whatever the new directions taken, the first step is to problematise international law's need for its histories as a celebration of individual geniuses and their (intellectual) next of kin.¹⁵⁷

Katherine Fite, as well as several other professionals, carried out tasks in institutional positions at key moments of past international criminal justice. Rebecca West and other authors and correspondents witnessed and analysed international criminal justice in contributions that merit attention, including in academic research. Even if in most cases white, educated, and from socially privileged classes, these women had heterogeneous backgrounds, beliefs, and politics. They were not necessarily particularly drawn to causes today labelled as women's own, such as

¹⁵⁴ See, e.g., Diane Otto, 'A Sign of "Weakness"? Disrupting Gender Certainties in the Implementation of Security Council Resolution 1325' (2006) 13 *Michigan Journal of Gender and Law* 113; Gina Heathcote, *The Law on the Use of Force: A Feminist Analysis* (London: Routledge, 2013).

¹⁵⁵ Rephrasing Koskenniemi, *The Gentle Civilizers*, p. 5.

¹⁵⁶ Kress, *Towards*.

¹⁵⁷ Compare to problematising versus rethinking versus rejecting the idea of a canon in literature, see Jan Gorak, *The Making of the Modern Canon: Genesis and Crisis of a Literary Idea* (London: Athlone, 1991).

criminal responsibility for sexual and gendered violence. Women were not absent nor were they invisible, however, as the traces and echoes presented demonstrate. Some women participated and took positions, argued and expressed themselves, even if at times using idioms different from the mainstream of the collective efforts, institutional events, and academic publications that presently structure the narrative of international criminal justice. Those forums were dominated by men who combined roles in academia, professional and intellectual associations, governments, diplomacy and international institutions. Their stories make out the core of this book – and set out the level of importance in the eyes of today's readers of histories of international criminal law. Yet, as Jean-Luc Godard put it, *'c'est la marge qui fait tenir la page'*.

The whys and wherefores of the margins are questions that haunt anyone attempting to engage in a historical inquiry based on sex and gender – or 'race', sexual orientation, class or other marker of presumed 'otherness', for that matter. A research mission to unearth forgotten or undervalued figures inevitably entails taking positions on the way agency and importance are construed – a much discussed issue in and beyond feminist, women's, and gender histories. Thus far, elsewhere-familiar questions concerning women's intellectual and professional inputs and their perceptions inside and outside the core of a social or academic context have not been addressed in international criminal law. Beyond epistemological challenges and broad sociological explanations, the politics of memory and identity are at stake. Whose experiences and accomplishments are valued, rendered authoritative in curriculums and footnotes, cherished in festschrifts and colloquiums? What images of past actors are transmitted further to students and young professionals? The moment has come both to reflect on what the meagre involvement in the past of actors other than (what appears as) white heteronormative men has meant and still means to the construction, salience, and legitimacy of international criminal justice, and to question whether our understanding of the past as just described is not merely the currently dominant historical narrative, obscuring others. More research on the imagined intellectual continuities and breaks, on lacunas of agency and over-expositions of identity could incite engagement with the prospects of renewal of the discipline, of roads not yet taken. Special rewards may follow from also paying attention to figures located outside the professional ranks of lawyers, or to legal professionals not canonised as 'key intellectuals'. Marginalised figures may have a different kind of voice that challenges the myopic arrogance of the core – if any such were left.